IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 25TH OCTOBER 2006 / 3RD KARTHIKA 1928

ST.Rev..No. 305 of 2006

TA.77/2004 of K.S.T.A.TRIBUNAL,ADDL.BENCH,KZD.
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PETITIONER

MS.COMTRUST EYE HOSPITAL,
PUTHIYARA, CALICUT, CHARITABLE TRUST REPRESENTED
BY ITS CHAIRMAN AND MANAGING TRUSTEE
K.K.S.NAMBIAR.

BY ADV. SRI.P.RAGHUNATH
SRI.PREMJIT NAGENDRAN

RESPONDENTS:
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1. ADDL.SALES TAX OFFICER I,
III CIRCLE, KOZHIKODE.

2. APPELLATE ASST.COMMISSIONER,
COMMERCIAL TAXES, KOZHIKODE.

3. STATE OF KERALA,
REPRESENTED BY COMMISSIONER OF COM.TAXES,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER (SHRI GEORGEKUTTY MATHEW)

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 25/10/2006 ALONG WITH S.T.REV. NO.309/06, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C. N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.

S.T.REV. NOS. 305 & 309 OF 2006

Dated this the 25th day of October, 2006

JUDGMENT

C. N. Ramachandran Nair, J.

Question raised is whether supply of Intra Occular Lens by petitioner hospital to patients in the course of cataract operation by replacing natural lens attracts sales tax under the KGST Act. It is common knowledge that cataract affects the natural lens making it partially or completely opaque and consequently affecting the vision. Treatment is cataract operation whereby the Doctor removes the affected natural lens and replaces it with an artificial lens behind the cornea after opening and stitching it. In other words, cataract operation involves replacement of natural lens with an artificial lens whatever be the material with which it is made of. Of course, lenses are of various types and the cost also is varying depending upon the quality. While considering petitioner's assessment which is a registered dealer,

the Assessing Officer made assessment of sales turnover of artificial lens replaced through cataract surgeries by making fifty per cent addition to the purchase turnover. Even though petitioner contested the assessments, the same was unsuccessful at two levels. These Revision Cases are filed against the common order of the tribunal sustaining the assessments confirmed in first appeal. The liability of a hospital for the purpose of sales tax was considered by this Court in the decision in P.R.S. Hospital v. State of Kerala ((2003) 11 KTR 176). This Court held that hospitals selling medicines in the course of medical treatment will be liable to pay tax. Replacement of natural lens with artificial lens supplied by hospital through implantation is not different from sale of medicines. While lens is inserted in the eye in place of natural lens in cataract surgery, artificial stent is fixed inside blood vessel in the course of angioplasty to clear occluded blood vessel supplying blood to the heart muscle. Similar is the case of installation of steel rods to repair or reconstruct damaged human bones, whether

crushed or corroded by reason of disease, injury, etc. Even though hospitals may be charging consolidated rates, the cost of material supplied is a major component of the charges and it is proportionate to the value of the item supplied, which again depends on its quality, brand name, etc. So far as rate of tax is concerned, the Sales Tax Act makes a provision for common rate of tax at eight per cent on all medical implants by including it in Entry 145 of the Ist Schedule to the Act which is as follows:

"145.	*Surgical equipments and instruments, medical implants and injection needles*	*At the point of first sale in the State by a dealer who is liable to tax under Section 5."*	*8%*

2. The contention raised by petitioner is that the tribunal was wrong in holding that the lens sold by petitioner in the course of cataract surgery would answer the description of spectacles falling under Entry 136 of the Ist Schedule to the KGST Act. Even though, the rate of tax under Entry 136 and Entry 145 is the same, we feel the controversy has to be sorted

out at least for the future. Entry 136 provides as follows:

"136.	*Spectacles, glasses, goggles, rough blank lenses, framed attachments, parts and accessories thereof.*	*At the point of first sale in the State by a dealer who is liable to tax under Sec. 5."*	*8%*

3. Even though an implanted lens also is a lens and is used for the purpose of gaining or improving vision, the same, in our opinion is not covered by Entry 136 which provides for spectacles, glasses, goggles, lenses etc. which are externally used. In other words, whatever is implanted in the body irrespective of its purpose, is a medical implant specifically covered by Entry 145 of the Ist Schedule to the Act. This certainly takes in lens used in cataract surgery. Same is the position in regard to metal rods implanted to substitute or strengthen bones, stent implanted in blood vessels, etc. In other words, all materials implanted in human body come within the description of "medical implants". Therefore, we are of the view that the lenses sold by petitioner through surgical implants

in cataract surgery attract tax under Entry 145 of the Ist Schedule to the KGST Act as medical implant, and not under Entry 136 of the Ist Schedule covering spectacles, goggles, lenses, etc.

4. Even though counsel based on the observation in the decision above referred, submitted that liability should be fastened on petitioner only for the year 2001 - 2002 onwards, we find from the Judgment that such a facility was granted to the petitioners, namely hospitals, only because during the pendency of the Writ Petitions there was stay and petitioners in those cases were not able to take registration, collect tax or remit the same. However, in this case, it is seen that petitioner was well aware of petitioner's liability under the KGST Act and, therefore, took registration and paid tax on turnover which they considered taxable. Therefore, this issue does not merit consideration by us. Apart from this, we do not think in revisional proceedings,

this Court enjoys the power to grant relief of the nature prayed for by petitioner.

The S.T. Rev. Cases are disposed of as above.

C. N. RAMACHANDRAN NAIR, JUDGE

K. M. JOSEPH, JUDGE

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